IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1386 OF 2006

Sou.Taramati Suresh Gandhi .. Petitioner.
Vs.
Dilip Ambadas Somase & Others .. Respondents.

Mr.Mulye i/b Mr.G.S.Godbole for the petitioner.
Mr.M.G.Gawde for respondent nos.1 to 4.
Mr.S.M.Sabrad for respondent no.6.

CORAM : D.B.BHOSALE, J.

DATED : 21ST AUGUST, 2006

P.C.:

. Heard learned counsel for the petitioner, respondent nos.1 to 4 and respondent no.6

2. The petitioner has impugned the order dated 9.1.2006 rejecting the application filed by the petitioner seeking amendment to the written statement. The application was rejected by the trial Court holding that under order VI Rule 17 no amendment could be allowed, once the trial commences, unless the Court comes to the conclusion that inspite of due deligence, the party could not file the application before commencement of the trial. The learned Judge while rejecting the application for amendment has not endeavoured to see whether the amendment sought was necessary for the purpose of determining the real

controversy between the parties. It is now well settled that all the amendments of the pleadings should be allowed which are necessary for determining the real controversy in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. It is further necessary that the proposed amendment should not cause prejudice to other side which cannot be compensated. The real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. The Supreme Court has recently in **Rajesh Kumar Aggarwal and Others Vs. K.K.Modi and Others 2006(4) SCC 385** has reiterated the aforestated well settled position in law. In the present case the learned Judge has not examined the application seeking amendment under Order VI Rule 17 in proper prespective and has rejected it holding that the petitioner had several opportunities to seek such amendment earlier and, therefore, it cannot be entertained at belated stage. The amendment which is necessary for determination of the real controversy in the suit can be allowed at any stage of the proceedings. In view thereof the impugned order is quashed and

set aside. The application seeking amendment is restored to file. The learned Judge shall decide the said application afresh in the light of the aforesaid judgment of the Supreme Court afresh within four weeks from the date of receipt of this order. The writ petition is, accordingly, disposed of.

(D.B.Bhosale, J.)